



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201247022

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

'AUG 30 2012

Uniform Issue List: 408.03-00

T:EP:NA: T2

Legend:

Taxpayer	=	*****
Spouse	=	*****
IRA X	=	***** ***** *****
Financial Institution A	=	*****
Financial Advisor F	=	*****
Amount A	=	*****
Amount B	=	*****
Amount C	=	*****
Amount D	=	*****
Date 1	=	*****
Date 2	=	*****

Date 3

=

*****.

This is in response to your request dated February 6, 2012, and supplemented with information provided on May 31, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 61, represents that he received distributions from IRA X of Amount A and Amount B. Taxpayer asserts that his failure to accomplish a rollover of Amount D into IRA X within the 60-day period prescribed by section 408(d)(3) was due to an error made by a representative from Financial Institution A. Taxpayer and Spouse file a joint income tax return.

On Date 1, Taxpayer withdrew Amount A from IRA X, and on Date 3, Taxpayer withdrew Amount B from IRA X. Both amounts were temporarily deposited in a non-qualified account so his financial advisor, Financial Advisor F from Financial Institution A, could purchase oil and gas tax-advantaged investments on behalf of Taxpayer. However, Financial Advisor F had only purchased Amount C of the investments on Date 2. Taxpayer has provided documentation consistent with his assertion that it was his intent to roll over any funds not invested in the oil and gas investments recommended by Financial Advisor F back into an IRA and that Financial Advisor F took responsibility for rolling the funds over. After approximately three months, it became apparent to Financial Advisor F that there were no more opportunities to purchase additional interests in the investments. By the time Financial Advisor F had discovered that he could not purchase additional investments on behalf of Taxpayer, the 60-day period had expired in which he could roll over the remaining funds, Amount D into an IRA. Financial Advisor F has provided documentation taking responsibility for the error.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury (or his delegate) may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error committed by Financial Advisor F by not timely re-depositing the unused funds into an IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***** at (****) *****.
*****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

 (Jason Levine,
Acting for
Donnell Littlejohn)

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: *****

